

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Petition for Order Declaring South Slope)	
Cooperative Telephone Company, Inc.)	WC Docket No. 04-347
An Incumbent Local Exchange Carrier in the)	
Iowa Exchanges of Oxford, Tiffin and Solon)	
)	

Reply Comments of South Slope Cooperative Telephone Co., Inc.

These Reply Comments are filed by the Petitioner, South Slope Cooperative Telephone Co., Inc. ("South Slope"), in response to the Commission's Notice of Proposed Rulemaking ("NPRM"), released October 10, 2008 in this proceeding and in response to Comments filed by the National Telephone Cooperative Association ("NTCA"), AT&T, Inc. ("AT&T") and Iowa Telecommunications Services, Inc. D/B/A Iowa Telecom ("Iowa Telecom").

No party opposes the grant of South Slope's Petition seeking incumbent local exchange carrier classification ("ILEC") in the Iowa Telecom exchanges of Oxford, Tiffin and Solon, Iowa.¹ In this respect, NTCA supports South Slope's Petition without qualification. It discusses how South Slope meets the three statutory elements of Section 251(h)(2) of the Communications Act of 1934, as amended ("the Act") 47 U.S.C. § 251(h)(2)), and particularly focuses on the broad public interest benefits that will flow from a grant of South Slope's Petition. It notes, for

¹ As noted in South Slope's Petition (filed Aug. 24, 2004) herein, the Iowa Utilities Board previously amended South Slope's Iowa certificate to include those Oxford, Tiffin, and Solon service areas in South Slope's North Liberty exchange. See Petition of South Slope Telephone Company, Inc. for an Order and Rule Pursuant to Section 251(h)(2) of the Communications Act declaring that South Slope Cooperative Telephone Company, Inc. Shall Be Treated as an Incumbent Local Exchange Carrier in the Iowa Exchanges of Oxford, Tiffin and Solon, WC Docket 04-347, filed Aug. 24, 2004, page 2, (South Slope Petition); Comments of South Slope Cooperative Telephone Co., Inc., filed Dec. 10, 2008, page 1, n. 1 ("South Slope Comments")

instance, that the Iowa Utilities Board made affirmative public interest findings when it granted South Slope's application to amend its Certificate of Public Convenience and Necessity in order to expand its service into Oxford, Solon, and Tiffin. NTCA Comments, page 4. NTCA further notes that South Slope has "substantively improved" the quality of service in the Iowa Telecom exchanges of Oxford, Tiffin and Solon and, likewise, charges lower rates than Iowa Telecom. Moreover, it offers EAS routes to customers in the three areas, while Iowa Telecom does not. South Slope similarly offers ubiquitous broadband services throughout the three exchanges, while Iowa Telecom does not. In this respect, NTCA calls South Slope's public interest showing "compelling." Id., pp. 4-5.

NTCA also observes that, while the inclusion of Oxford, Tiffin, and Solon in South Slope's ILEC operations will reduce South Slope's reporting requirements to NECA, with consequent re-direction of services to customers, the additional costs to the interstate jurisdiction will be negligible. Id., p. 5. Finally, NTCA discusses the fact that a grant of South Slope's Petition will have no long term impact on competition, as South Slope's rural exemption already has been lifted by the Iowa Utilities Board. Id.

AT&T's Comments do not support South Slope's Petition, but neither does AT&T oppose the Petition. AT&T argues only that the reclassification of Oxford, Tiffin, and Solon should "follow the precedent established in Mid-Rivers." AT&T Comments, p. 3. AT&T specifically argues that South Slope should remain subject to existing interstate non-dominant regulation, and that changes in interstate access charges and/or universal service should await further Commission proceedings. Id., pp. 3-4.

Finally, the Comments of Iowa Telecom support the grant of South Slope's Petition. Iowa Telecom agrees that South Slope has satisfied the statutory elements of section 251(h)(2).

It agrees that South Slope “occupies a position in the market at least comparable to Iowa Telecom.” It also agrees that South Slope has “substantially replaced” Iowa Telecom in the relevant markets. Iowa Telecom Comments, pp. 4-5. Iowa Telecom then urges “a strict standard of relevance” in measuring the public interest element (*Id.*, p. 5). Although Iowa Telecom spends the next fourteen pages airing a list of grievances (discussed later in the Reply Comments), Iowa Telecom’s bottom line is that it wants conditions placed upon a grant of South Slope’s Petition. Specifically, Iowa Telecom wants South Slope to ‘correct’ LERG entries in service areas in which Qwest is the incumbent and Iowa Telecom has no interest, it wants non-dominant classification in the three exchanges for itself, and it wants the Commission to “...reserve judgment on appropriate treatment of South Slope for interstate access charges and study area boundary purposes...” in the three areas. *Id.*, p. 19.

Summary of Position and Argument

South Slope agrees with the Comments of NTCA that South Slope has satisfied the three elements of section 251(h)(2) of the Act. And, although AT&T did not oppose South Slope’s Petition, South Slope has no quarrel with AT&T’s apparent argument that South Slope should remain subject to non-dominant regulations until further proceedings, following the Mid-Rivers precedent. AT&T Comments, p. 4 & n. 12. Also see South Slope comments, filed Dec. 10, 2008, pp. 8-9.

South Slope does differ with Iowa Telecom, however. Although Iowa Telecom’s position boils down to requiring LERG changes by South Slope (beyond those already required by the Iowa Utilities Board), the majority of Iowa Telecom’s Comments are devoted to unadjudicated, or even unfiled, state law claims, impugning South Slope’s motives, claims on

behalf of carriers other than Iowa Telecom, and alleged violations of federal law. All of those allegations are baseless.

Iowa Telecom's Public Interest Argument Is Much Ado about Nothing

As part of its argument concerning proposed conditions, Iowa Telecom argues that the Commission should apply “a strict standard of relevance” in determining the public interest benefits of South Slope’s Petition. Iowa Telecom Comments, pp. 5-7. This argument proceeds entirely on the supposition that the “incentives” created by higher access charge and universal service fund revenues “may be the primary public interest benefits” relied upon by South Slope. Id. Indeed, further speculating, Iowa Telecom posits that these incentives are based on “dramatically increased” universal service funding and access charges: “[p]resumably, these rewards and incentives are based on dramatically increased universal service support and interstate access charge receipts.” Id., p. 5. Of course, there is no cost information to back up this speculation, and it is not true. South Slope’s Petition (filed Aug. 24, 2004) estimated that the annual interstate impact of including Oxford, Tiffin, and Solon in South Slope’s regulated operations will be approximately \$25,500.00. Petition, p. 7. South Slope has revisited that estimate and still finds it to be accurate. And, although South Slope continues to submit that the tariffing and related regulatory impacts should be determined in the context of a study area waiver proceeding (after the instant rulemaking is concluded), it is evident that Iowa Telecom is straining at a gnat. As earlier referenced, Iowa Telecom’s Comments are visibly without

substance. It even speculates that it could “fashion” its own federal claim while complaining against South Slope on Qwest’s behalf.² Iowa Telecom Comments, p. 14 & n. 25.

At the end of the day, though, Iowa Telecom failed to deliver to the public. It was South Slope who went to the Utilities Board and had its certificate amended to expand its exchange boundaries to include the communities of Solon, Tiffin, and Oxford, making them part of its North Liberty exchange.³ See, South Slope Petition, pp. 2-3 & Attachment 1. South Slope subsequently invested more than \$12 million⁴ in infrastructure, including fiber-to-the-home, while Iowa Telecom simply stayed at home. For example, South Slope has provided state-of-the-art service in eighteen subdivisions while Iowa Telecom failed to construct anything in those subdivisions, much less provide service.

Understandably, Iowa Telecom’s would-be customer base marched. At the time of South Slope’s Petition, South Slope estimated that approximately 86% of the customers in the Oxford exchange took South Slope’s service. In Tiffin and Solon, the same estimated percentages were, respectively, 85% and 82%. See, South Slope Petition, p. 3. As noted in the NPRM, those same percentages had increased to 91.6% for Oxford; to 89.6% for Tiffin; and to 90.2% in Solon. See NPRM at para. 2 & n. 11. These percentages are even higher now.⁵

The euphemism that no good deed goes unpunished fits well here. As a result of South Slope’s industry and capital risk, it has faced a welter of Iowa Telecom inspired litigation, both at the Iowa Utilities Board and now in this proceeding. Having failed in the marketplace, Iowa Telecom wants to restore its position by regulatory fiat. Its argument that South Slope should

² In the same vein, Iowa Telecom insinuates that South Slope is violating FCC rules on CLEC access charges. See, Iowa Telecom Comments, pp 2, 18 & nn 10, 37. Of course, Iowa Telecom’s reckless speculation is devoid of any proof. This is because the suggestion is untrue.

³ Under Iowa law, exchanges are not mutually exclusive. Therefore, the communities of Oxford, Tiffin, and Solon are a part of South Slope’s North Liberty exchange as well as Iowa Telecom’s Oxford, Tiffin, and Solon exchanges. Iowa Code Section 476.29(12) and 476.101(1).

⁴ See, South Slope Reply and Resistance, Iowa State Util. Bd. Docket No. RPU-07-01 (TF-07-32; FCU-06-25).

⁵ See, Comments of South Slope Cooperative Telephone Co., Inc., Docket 04-347, filed December 10, 2008, pp 4-5.

not enjoy any increase in access charge revenues and/or universal service funding (as earlier discussed, any additional revenue requirement impact should be negligible) is a reflection of this unprincipled approach. Having expended over \$12 million to extend the benefits of universal service in the affected exchanges, is it not in the public interest to at least treat South Slope no less favorably than any other ILEC? Iowa Telecom merely wants to make life harder for South Slope. And as the balance of these Reply Comments demonstrate, Iowa Telecom's efforts fall well short of the mark.

South Slope Has Not Denied Iowa Telecom Dialing Parity

As apparent grounds to condition any grant of South Slope's Petition (Iowa Telecom's pleading is unclear as to whether its argument has any other purpose), Iowa Telecom complains that South Slope has denied it Dialing Parity under section 251(b)(3) of the Act. Specifically, Iowa Telecom complains that when a South Slope customer in the North Liberty exchange calls an Iowa Telecom customer in Oxford, Solon or Tiffin, the call is treated as a ten digit toll call. On the other hand, when the same customer calls a South Slope customer in Oxford, Solon or Tiffin, it is treated as a local, seven digit call. Iowa Telecom Comments, pp. 9-12. Iowa Telecom calls this an "illegal practice." *Id.*, p. 12.

Iowa Telecom is mistaken. When South Slope first sought and received permission to expand its certificate to provide service in GTE's Tiffin exchange, the Iowa Utilities Board discussed South Slope's proposal to use the toll network in this fashion. In re: South Slope Cooperative Telephone Company, Docket No. TCU-96-1, Order Conditionally Approving Application for Modification of Certificate, Iowa Utilities Board, January 13, 1997. It did not

require South Slope to modify its proposal, though, instead recommending an informal resolution. Id., p. 6.

Subsequently, the parties have agreed to a calling scope whereby “calls between customers of each Party within the same rate center will be treated as local calls” (emphasis supplied). The letter agreement by which this was accomplished, and the Iowa Telecom letter filing the agreement with the Iowa Utilities Board (dated March 8, 2007 with “Filed” stamp of March 12, 2007) are attached to this pleading as Exhibit A. The dialing treatment of which Iowa Telecom complains is consistent with the parties’ agreement.

Having thus contracted for the calling scope Iowa Telecom now enjoys with South Slope, Iowa Telecom argues that federal law now requires South Slope to change its own intra-company dialing patterns and, in the process, to erase the benefits of its bargain with Iowa Telecom. It is by now black letter law that parties are free to strike their own terms of interconnection, regardless of the requirements of sections 251(b) and (c), including Dialing Parity.⁶ See 47 U.S.C. 252(a)(1); Bellsouth Telecommunications Inc. v. NuVox Communications Inc., 2006 U.S. Dist. LEXIS 65029 (N.D. Ga. 2006). As previously discussed, South Slope’s dialing is consistent with the parties’ Interconnection Agreement, as amended, and with prior Orders of the Iowa Utilities Board. And, if there is any claim that the Interconnection Agreement is being violated, it is the Iowa Utilities Board which is charged with making that determination. See 47 U.S.C. 252(e).

Iowa Telecom’s arguments thus should be rejected. Like much of the rest of its pleading, they are baseless, proffered for no reason other than to hinder a competitor.

⁶ South Slope denies that Iowa Telecom has any claim for infringement of its rights vis-à-vis Dialing Parity in the first instance.

Iowa Telecom's Complaint on Qwest's Behalf Is Unfounded

Iowa Telecom's last argument in support of the imposition of conditions for any FCC order in favor of South Slope here concerns another attempt at forum shopping. In this respect, Iowa Telecom argues that South Slope has improperly associated its Cedar Rapids and Iowa City numbers with South Slope's North Liberty rate center. The result, Iowa Telecom complains, is that Qwest is legally barred from porting numbers in its Cedar Rapids and Iowa City rate centers. Iowa Telecom also argues that South Slope's current LERG entries unfairly affect Iowa Telecom's calling scope from Oxford, Solon and Tiffin; the explanation of how this occurs is less than clear. See Iowa Telecom Comments, pp. 12-15.

None of these charges are true, and they plainly constitute an unprincipled attempt to forum shop. On this score, and undisclosed by Iowa Telecom, it should be noted that a Complaint proceeding is currently pending before the IUB on the subject of correct calling scopes between Qwest and South Slope. The proceeding arises from Qwest's unilateral discontinuance of toll free dialing between Qwest's Cedar Rapids, Iowa customers and South Slope's customers in Oxford, Solon and Tiffin. Iowa Telecom has been granted intervenor status in that case.

A Procedural Order and Notice of Hearing ("Procedural Order") was issued on November 13, 2008 and is attached as Exhibit B. Significantly, the Procedural Order identifies as an issue the following: "[w]hen the Board ordered South Slope to correct the Local Exchange Routing Guide (LERG) at page 19 of the 'Final Order' in docket FCU-06-25, whether that correction had the effect of requiring Qwest to charge toll rates for calls from Cedar Rapids into the Oxford, Tiffin and Solon exchanges." Procedural Order, p. 8 at para. 13. Thus, the issue of the LERG entries' effect upon calling scopes between South Slope and Qwest is squarely before

the Iowa Utilities Board. Iowa Telecom's attempt to inject the issue here, involving a third party to boot, is forum shopping in its most unprincipled form.

So too, are Iowa Telecom's arguments concerning Qwest's rights to Local Number Portability (LNP). As a threshold matter, it should be noted that Qwest has not requested LNP from South Slope. If it did, South Slope would take the request seriously. Iowa Telecom's argument that Qwest "cannot lawfully port" South Slope's North Liberty rate center numbers because of restrictions on wireline service provided portability is just dross. See, Iowa Telecom comments, p. 13.

At bottom, South Slope believes it could lawfully offer LNP to Qwest (or Iowa Telecom) under the circumstances, which the Iowa Utilities Board has found to be unique.⁷ In fact, South Slope has offered to provide LNP to Iowa Telecom on a contractual basis and the offer was refused. Accordingly, its complaint regarding LNP is a ruse. And even if the offering did depart from the requirements of § 251(b)(3), the parties are free to "contract around" them. (NuVox at p *32.)

Thus, like the calling scope issue, Iowa Telecom's complaints about LNP constitute a red herring. The FCC should reject these arguments as meritless. Iowa Telecom's efforts are better spent doing its homework at the service level.

Conclusion

For the foregoing reasons, South Slope respectfully requests the Commission grant its Petition. As is clear from South Slope's original petition and comments, South Slope satisfies all of the criteria for designation as an ILEC set forth in the Act and by the Commission in the Mid-

⁷ In Re South Slope Telephone Cooperative, Inc., Docket No. RPU-07-14, Final Order, February 13, 2008, p16-17. ("The Board is sympathetic to the unusual changes to South Slope's status and its business plan when it was ordered to stop assessing the CCLC.")

Rivers proceeding. None of the comments filed detract from this fact. The Commission should not condition its grant of South Slope's Petition as argued by Iowa Telecom.

Respectfully submitted,

**SOUTH SLOPE COOPERATIVE
TELEPHONE COMPANY, INC.**

/s/ Benjamin H. Dickens, Jr.
By: Benjamin H. Dickens, Jr.
Mary J. Sisak
Salvatore Taillefer, Jr.
Its Attorneys

Blooston, Mordkofsky, Dickens,
Duffy, & Prendergast, LLP
2120 L Street NW
Suite 300
Washington, DC 20037

(202) 659-0830

Dated: December 31, 2008

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 31st day of December, 2008, a copy of the **Reply Comments of South Slope Cooperative Telephone Company, Inc.** was served via electronic mail or by U.S. Mail, as indicated, to the following:

Via e-mail:

Competition Policy Division, Wireline
Competition Bureau, Federal Communications Commission,
Room 5-C140,
445 12th Street, S.W.,
Washington, D.C. 20554
cpdcopies@fcc.gov.

Best Copy and Printing, Inc., Portals II,
445 12th Street, S.W.,
Room CY-B402,
Washington, D.C. 20554,
fcc@bcpiweb.com.

Tom Fisher
Parrish Law Firm
Counsel for Rural Iowa Independent Telecommunications Association
P.O. Box 12277
Des Moines, Iowa 50312
tfisher@parrishlaw.com

John Ridgway
Iowa Utilities Board
Manager, Telecommunications Section
Iowa Utilities Board
350 Maple Street
Des Moines, Iowa 50319-0069
john.ridgway@iub.state.ia.us

Via U.S. Mail:

Donald G. Henry
Vice President and General Counsel
Iowa Telecommunications Services, Inc.
115 S. Second Avenue West
P.O. Box 1046
Newton, Iowa 50208

M. Robert Sutherland
Attorney for AT&T
1120 20th Street, NW
Washington, DC 20036

Daniel Mitchell
Attorney for the National Telecommunications Cooperative Association
4121 Wilson Blvd. 10th Floor
Arlington, VA 22203

/s/ Salvatore Taillefer, Jr.

Blooston, Mordkofsky, Dickens,
Duffy, & Prendergast LLP
2120 L Street NW
Suite 300
Washington, DC 20037

Exhibit A



~~REDOUBLED CHECKED~~
~~ORIGINAL~~
~~DO NOT REMOVE~~

IOWA TELECOM
115 S. Second Avenue West
Newton, Iowa 50208-1046
(641) 787-2000
FAX (641) 787-2001

FILED WITH
Executive Secretary

3/8/2007

MAR 12 2007

IOWA UTILITIES BOARD

Ms. Judi K. Cooper
Executive Secretary
Iowa Utilities Board
350 Maple Street
Des Moines, IA 50319-0069

RE: APPLICATION OF IOWA TELECOMMUNICATIONS SERVICES, INC. D/B/A IOWA TELECOM ("IOWA TELECOM") AND SOUTH SLOPE COOPERATIVE TELEPHONE CO. ("SSCTC") FOR APPROVAL FOR IOWA TELECOM AND SSCTC TO REINSTATE THE PREVIOUS INTERCONNECTION, RESALE AND UNBUNDLING AGREEMENT, AS AMENDED, BETWEEN IOWA TELECOM AND SSCTC, DOCKET NO. NIA-99-2, PURSUANT TO THE FEDERAL COMMUNICATIONS ACT.

Dear Ms. Cooper:

Enclosed are an original and three (3) copies of a letter of agreement executed by Iowa Telecom and SSCTC whereby the parties agree to reinstate the previously amended interconnection agreement negotiated between Iowa Telecom and SSCTC. The Iowa Utilities Board ("Board") approved the SSCTC agreement in Docket No. NIA-99-2.

Iowa Telecom and SSCTC ask the Board to approve reinstatement of this interconnection, resale and unbundling agreement.

If you have any questions, please do not hesitate to contact me at (641) 787-2357.

Sincerely,

D.M. Anderson
Vice President – External Affairs

DMA:JPL:jw
Enclosures

cc: Office of Consumer Advocate (w/enc.)

J.R. Brumley (w/enc.)
South Slope Cooperative Telephone Co.
980 North Front Street
North Liberty, IA 52317

DISTRIBUTION	
<input checked="" type="checkbox"/>	File
<input type="checkbox"/>	Bd. Mbr.
<input type="checkbox"/>	Exec. Sec.
<input checked="" type="checkbox"/>	Gen. Coun.
<input type="checkbox"/>	Cust. Ser.
<input type="checkbox"/>	Policy
<input type="checkbox"/>	Energy
<input checked="" type="checkbox"/>	Telecom



RECEIVED
MAR 8 2007

RECEIVED
MAR 8 2007
EXTERNAL AFFAIRS

IOWA TELECOM
115 S. Second Avenue West
P.O. Box 1046
Newton, Iowa 50208-1046
(641) 787-2000
Fax (641) 787-2001
www.IowaTelecom.com

March 5, 2007

FILED WITH
Executive Secretary

MAR 12 2007

Mr. J. R. Brumley, CEO
South Slope Cooperative Telephone Co.
980 North Front Street
North Liberty, IA 52317

IOWA UTILITIES BOARD

**Re: Interconnection, Resale and Unbundling Agreement
Iowa Utilities Board Docket No. NIA-99-2**

Dear Mr. Brumley:

As you are aware, Iowa Telecom and South Slope Cooperative Telephone Co. ("SSCTC") have not yet concluded negotiations of a new interconnection agreement. Although the previous interconnection agreement (identified above) expired on May 22, 2005, there is still a need for interoperability between our networks. Therefore consistent with Mr. Porter's correspondence with Mr. Lee, Iowa Telecom proposes reinstating the expired agreement until we have completed negotiations and, if necessary, arbitration of a new interconnection agreement.

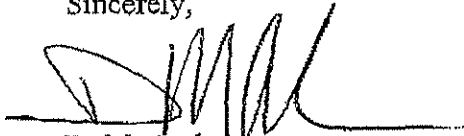
Iowa Telecom and SSCTC agree to reinstate the expired Interconnection, Resale and Unbundling Agreement, Docket No. NIA-99-2, as amended by the Parties on February 23, 2005, but with a term that will expire when the Parties have executed a replacement agreement and that new agreement becomes effective. Further, the Parties agree to reinstate Articles IV (As this Article IV refers to Resale issues, Unbundled Elements references are not included in the reinstatement) and VI of the original interconnection agreement to permit Iowa Telecom to resell South Slope services in the Oxford, Solon and Tiffin exchanges according to the terms of those Articles. All other issues remain to be resolved in subsequent negotiations. Finally, the Parties agree to "reset the clock" to treat March 5, 2007 as day 120 in the negotiation timeline established by the Iowa Utilities Board ("Board") rules that permit either Party to request Board arbitration of unresolved issues during the period between 135 and 160 days after negotiations began.

In particular, the Parties have agreed that for purposes of this agreement South Slope is operating as a competitive local exchange service provider CLESP or, as a competitive local exchange carrier ("CLEC") to the extent that it provides local exchange service in the Oxford, Solon and Tiffin rate centers. South Slope will promptly reassociate in the LERG those NPA/NXXs it acquired to compete in these exchanges with the appropriate Oxford, Solon or Tiffin rate center. Thereafter, both Parties will offer local number portability within each rate center and calls between customers of each Party within the same rate center will be treated as local calls.

Following your review of this letter, please sign and return two (2) originals of this document to my attention. One original will be filed with the Iowa Utilities Board and Iowa Telecom will keep the other.

Please feel free to call me at 641-787-2357 with any questions you might have concerning this matter.

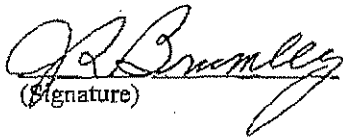
Sincerely,



D. M. Anderson
Vice President – Marketing and External Affairs
Iowa Telecom

By its countersignature, SSCTC indicates its review and acceptance of the above agreement:

South Slope Cooperative Telephone Co.



(Signature)

3-6-07
(Date)

J. R. Brumley
CEO
South Slope Cooperative Telephone Co.

c: David N. Porter
Director - Industry Relations
Iowa Telecom

Exhibit B

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: QWEST CORPORATION AND SOUTH SLOPE COOPERATIVE TELEPHONE COMPANY	DOCKET NO. FCU-08-14 (C-07-246, C-07-251, C-07-252, C-07-254, C-07-256, C-07-257, C-07-265, C-07-266, C-07-270, C-07-271, C-07-272)
---	---

PROCEDURAL ORDER AND NOTICE OF HEARING

(Issued November 13, 2008)

During October and November 2007, 11 residential and business customers from Cedar Rapids, Oxford, Solon, and Marion, Iowa, filed written complaints with the Utilities Board (Board) against Qwest Corporation (Qwest) and South Slope Cooperative Telephone Company (South Slope). The customers complained that Qwest and South Slope discontinued toll-free calling between certain Qwest and South Slope customers in Cedar Rapids, Oxford, Solon, and Tiffin, Iowa. The Qwest customers stated they had received a letter from Qwest telling them that effective November 15, 2007, calls placed from Cedar Rapids to Oxford, Solon, and Tiffin would be billed as long distance calls.

Board staff forwarded the complaints to Qwest and South Slope for response. Qwest and South Slope filed responses, and later filed additional information requested by Board staff. On December 31, 2007, Board staff issued a proposed resolution concluding that Qwest had violated the Board's rules by failing to provide

proper notice to the Board of its discontinuance of non-toll interexchange trunking service (EAS) for calls between Cedar Rapids and Oxford, Solon, and Tiffin.

On January 14, 2008, Qwest requested that Board staff reconsider its proposed resolution. On February 1, 2008, Board staff issued a revised proposed resolution finding that Qwest never included EAS or toll-free service from Cedar Rapids to Oxford, Solon, and Tiffin in its tariff. Board staff concluded that such calls had been mistakenly treated as EAS calls because they appeared to terminate in North Liberty. Staff concluded that the Board's rules regarding discontinuance of service did not apply because the service was never a properly tariffed service.

On February 8, 2008, South Slope filed a request that the Board reinstate staff's original proposed resolution, or alternatively, to initiate a formal complaint proceeding.

On February 12, 2008, Mr. Aaron Smith, one of the customers who filed a complaint with the Board, filed a letter further expressing his concerns and requesting a formal complaint proceeding. On February 26, 2008, Mr. Smith filed an additional letter expressing his concerns.

On April 4, 2008, the Board issued an order denying formal complaint proceedings. On April 30, 2008, South Slope filed a motion for reconsideration of the order. On May 30, 2008, the Board issued an order granting South Slope's motion for reconsideration. The Board ordered South Slope to file either a statement of material factual issues in dispute that required a hearing, or a statement that there

were no such issues. South Slope filed its response on June 19, 2008, in which it listed the material factual issues it alleges are in dispute.

The details of the informal complaint dockets are contained in informal complaint files C-07-246, C-07-251, C-07-252, C-07-254, C-07-256, C-07-257, C-07-265, C-07-266, C-07-270, C-07-271, and C-07-272, which are incorporated into the record in this formal proceeding pursuant to 199 IAC 6.7.

On September 8, 2008, the Board issued an order docketing this case for a formal proceeding and assigning it to the undersigned administrative law judge. In the order, the Board made the following tentative rulings, which it stated were subject to change after hearing the evidence and argument.

At this time, the Board does not agree with South Slope that the Board is conditioning, restricting, or revoking South Slope's certificate or proposing to take any such action. A certificate of public convenience and necessity issued pursuant to § 476.29 represents authorization to offer landline local telephone service in a defined service territory in Iowa. It does not specify, limit, or define the terms and conditions of that service offering; that is typically done in the Board's rules or the utility's tariff. The Board is not proposing to revoke or alter South Slope's authorization to offer local services in the exchanges it serves; instead, the issues here appear to revolve around statutes, rules, and tariff provisions, not certificates. Thus, there is no need to notify South Slope of any inadequacies in its services and facilities or to allow South Slope an opportunity to cure the alleged inadequacies, because there is no expectation that this proceeding will result in Board-ordered changes to South Slope's certificate.

The Board emphasizes that this is a tentative conclusion, offered for the guidance of the parties. If, after hearing the evidence and argument, the ALJ concludes that it is, in fact, necessary to place conditions on South Slope's certificate or to revoke it, in whole or in part, the ALJ will notify South Slope of any identified inadequacies

in its services and facilities and will allow South Slope a reasonable time to address them.

On September 18, 2008, the undersigned issued an order setting a prehearing conference and requiring the parties to file certain information. At the request of South Slope, the filing deadlines were extended and the prehearing conference was moved to November 5, 2008. The order told Mr. Smith he should notify the Board by October 29, 2008, if he did not wish to be a party to this case. The order also required the remaining customers who had filed informal complaints with the Board to notify the Board if they wished to become parties to the case.

Pursuant to the order, South Slope filed a list of the prior dockets, orders, statutes, and rules it asserts are related to the subject matter of this proceeding, and a list of issues it asserts must be decided in the case, on October 17, 2008. Qwest filed a list of the prior dockets, orders, statutes, and rules it asserts are related to the subject matter of this proceeding, and a list of issues it asserts must be decided in the case, on October 24, 2008. Mr. Smith did not file a notification with the Board. The remaining customers also did not file notification with the Board. Therefore, Mr. Smith will continue to be considered a party to the case and the remaining complaining customers will NOT be considered to be parties to the case.

On November 5, 2008, a prehearing conference was held in Conference Room 3, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa. Qwest was represented by its attorney, Mr. George Baker Thomson. Mr. Robert Brigham was also present by telephone for Qwest. Qwest requested that the Board's service list

be changed to include Mr. Thomsen and attorney Mr. David Sather, rather than Ms. Diana Ornelas, on behalf of Qwest. South Slope was represented by its attorney, Ms. Terri C. Davis. Mr. J.R. Brumley was also present for South Slope. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) was represented by its attorney, Ms. Alice Hyde. Mr. Smith was not present at the prehearing conference. Ms. Hyde agreed to take the lead to contact Mr. Smith in an attempt to determine whether he intends to participate as a party in the case. None of the complaining customers appeared at the prehearing conference. The parties agreed to the procedural schedule set forth in this order at the prehearing conference.

On November 7, 2008, the Consumer Advocate filed a letter with the Board stating that Ms. Hyde had spoken with Mr. Smith regarding his interest in this docket. The letter states that Mr. Smith remains interested in having the matter resolved and provides information regarding his interest. It further states that Mr. Smith does not anticipate being actively involved in the docket, but may want to offer a statement at the hearing if he can do so by telephone. Based on the representations in the letter, Mr. Smith remains a party in this case and will remain on the Board's service list.

Pursuant to the Board's order docketing the case for investigation, Iowa Code § 476.3, 199 IAC 6.5, and 199 IAC 7, a procedural schedule will be established and a hearing date set.

The statutes and rules involved or potentially involved in this case include Iowa Code §§ 17A.2(6), 17A.18, 476.2, 476.3, 476.4, 476.5, 476.7, 476.11, 476.20, 476.29, 476.95, 476.96, 476.100, 476.101, and Board rules at 199 IAC 1.8, 1.9, 22.1(3), 22.2(5), 22.8, 22.16, 22.20, and chapters 6 and 7. Links to the Iowa Code and the Board's administrative rules (in the Iowa Administrative Code (IAC)) are contained on the Board's Web site at www.state.ia.us/iub.

THE ISSUES

The issues in this case include the following:

1. Whether a telephone *exchange* under Iowa law is exclusive or nonexclusive.
2. Whether a *rate center* is a specific geographic point identified by specific vertical and horizontal (V&H) coordinates used to measure distant sensitive End User Customer traffic to/from a particular NPA-NXX designation with the specific rate center.
3. Whether an *exchange* under Iowa law is a geographic area.
4. Whether Qwest's discontinuance of toll-free calling between certain Qwest customers and South Slope customers in Oxford, Solon, and Tiffin violated Iowa Code § 476.20(1).
5. Whether Qwest's discontinuance of toll-free calling between certain Qwest customers and South Slope customers in Oxford, Solon, and Tiffin has the effect of unlawfully conditioning, restricting, or partially revoking

South Slope's Certificate No. 0120 issued pursuant to Iowa Code § 476.29, such that approval by the Board of Qwest's action would constitute a violation of Iowa Code § 476.29.

6. Whether Qwest's alleged justifications for discontinuance of toll-free calling between certain Qwest customers and South Slope customers in Oxford, Solon, and Tiffin are barred by Board principles of *res judicata*.

7. Have the complainants and/or South Slope ever complied with or requested a Board waiver from the requirements of 199 IAC 22.8 regarding establishing toll-free EAS from Cedar Rapids to the Oxford, Tiffin, and Solon exchanges, as suggested by the Board at pp. 7 and 8 of the "Order Denying Requests for Formal Complaint Proceedings," issued on April 4, 2008, in Docket Nos. C-07-246, *et al.*

8. Whether the "Final Order," issued on January 23, 2007, in Docket No. FCU-06-25, the "Final Order," issued on February 13, 2008, in Docket No. RPU-07-1, the "Order Denying Requests for Formal Complaint Proceedings," issued on April 4, 2008, in Docket Nos. C-07-246, *et al.*, and the "Arbitration Order," issued on June 23, 2008, in Docket No. ARB-08-1,¹ taken together, conclusively establish that South Slope operates as a competitive local exchange carrier (CLEC) in the Oxford, Tiffin, and Solon exchanges.

¹ The Board issued an "Order Denying Request for Reconsideration" in Docket No. ARB-08-1 on July 31, 2008.

9. Whether South Slope timely appealed any of the following: the "Final Order," issued on January 23, 2007, in Docket No. FCU-06-25, the "Final Order," issued on February 13, 2008, in Docket No. RPU-07-1, and the "Arbitration Order," issued on June 23, 2008, in Docket No. ARB-08-1.

10. Whether Qwest has ever included EAS or toll-free service from Cedar Rapids to the Oxford, Tiffin, and Solon exchanges in a tariff or catalog offering.

11. If an EAS "service" was never a tariffed service, and/or was never properly authorized by the Board, whether the Board's discontinuance of service rules would apply to Qwest's actions that led to the complaints.

12. Whether South Slope's still-pending request to the Federal Communications Commission (FCC) to be treated as the incumbent local exchange carrier (ILEC) in the Oxford, Tiffin, and Solon exchanges implicitly acknowledges that, prior to any FCC decision or opinion on this request, South Slope operates in those three exchanges as a CLEC or competitive local exchange service provider (CLESP).

13. When the Board ordered South Slope to correct the Local Exchange Routing Guide (LERG) at page 19 of the "Final Order" in Docket No. FCU-06-25, whether that correction had the effect of requiring Qwest to charge toll rates for calls from Cedar Rapids into the Oxford, Tiffin, and Solon exchanges.

14. Consequently, if an EAS "service" between Cedar Rapids and the Oxford, Tiffin, and Solon exchanges was never tariffed, and the Board's discontinuance of service rules do not apply, and South Slope adjusted the LERG pursuant to the Board's directions at page 19 of the "Final Order" in Docket No. FCU-06-25, whether there is any basis in law or rule for these complaints.

15. How the concerns expressed by Mr. Smith and the other complaining customers should be addressed.

16. Other issues may be raised during the course of this proceeding.

PREPARED TESTIMONY AND EXHIBITS

All parties will have the opportunity to present and respond to evidence and make argument on all issues involved in this proceeding. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision that will be issued in this case must be based on evidence contained in the record and on matters officially noticed. Iowa Code §§ 17A.12(6) and 17A.12(8). The undersigned notes that there are numerous prior Board dockets and orders that relate to the subject matter of this proceeding and that may affect the decision in this case.

The submission of prepared evidence prior to hearing helps identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in

question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined concerning the statements already made in writing. The use of prepared testimony and submission of documentary evidence ahead of the hearing prevents surprise at the hearing and helps each party to prepare adequately so a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1) and (3); 199 IAC 7.10.

PARTY STATUS AND COMMUNICATION WITH THE BOARD

Qwest, South Slope, Mr. Smith, and the Consumer Advocate are currently the parties in this proceeding.

Any party who communicates with the Board must send an original and ten copies of the communication to the Executive Secretary, 350 Maple Street, Des Moines, Iowa, 50319-0069, accompanied by a certificate of service. One copy of the communication must also be sent at the same time to each of the other parties to this proceeding, except that three copies must be served on the Consumer Advocate. 199 IAC 7.4(6)"c."

These procedures are necessary to comply with Iowa Code § 17A.17 and 199 IAC 7.22, which prohibit ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the case. Calls to the Board to ask

about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned administrative law judge unless the other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

The materials that have been filed in this docket are available for inspection at the Board Records and Information Center, 350 Maple Street, Des Moines, Iowa 50319. Copies may be obtained by calling the Records and Information Center at 515-281-5563. There will be a charge to cover the cost of the copying. Board orders are available on the Board's Web site at www.state.ia.us/iub.

All parties should examine the applicable law listed above for substantive and procedural rules that apply to this case.

IT IS THEREFORE ORDERED:

1. Pursuant to 199 IAC 6.7, the written complaints and all supplemental information and filings from the informal complaint proceedings, identified as informal complaint files C-07-246, C-07-251, C-07-252, C-07-254, C-07-256, C-07-257, C-07-265, C-07-266, C-07-270, C-07-271, and C-07-272, are part of the record in this formal complaint proceeding.
2. Any person not currently a party who wishes to intervene in this case must meet the requirements for intervention in 199 IAC 7.13 and must file a petition

to intervene with the Board no later than 20 days following the issuance of this order.
199 IAC 7.13(1).

3. On or before December 12, 2008, South Slope must file prepared direct testimony and exhibits. South Slope must also file an exhibit list with its exhibits. South Slope should use exhibit numbers one and following.

4. On or before January 9, 2009, Qwest must file prepared direct and responsive testimony and exhibits. Such testimony and exhibits are to be both Qwest's initial testimony and testimony that is responsive to South Slope's testimony. Qwest must also file an exhibit list with its exhibits. Qwest should use exhibit numbers 100 and following.

5. If the Consumer Advocate or Mr. Aaron Smith wish to file testimony and exhibits in this case, the testimony and exhibits must be filed on or before January 16, 2009. Such testimony and exhibits are to be both the initial testimony of the party and testimony responsive to South Slope's and Qwest's testimony. The Consumer Advocate should use exhibit numbers 200 and following and must file an exhibit list with its exhibits. Mr. Aaron Smith should use exhibit numbers 300 and following and must file an exhibit list with his exhibits.

6. If South Slope chooses to file prepared reply testimony and exhibits, it must do so on or before January 23, 2009. If it files additional exhibits, South Slope must file an updated exhibit list.

7. On or before January 23, 2009, South Slope and Qwest must file a stipulation of facts with the Board. South Slope and Qwest must provide a draft copy of the stipulation of facts to the Consumer Advocate and to Mr. Aaron Smith at least one week prior to January 23, 2009. In the filing, South Slope and Qwest must state whether the Consumer Advocate and Mr. Aaron Smith agree or disagree with the stipulation of facts. If there is any disagreement by the Consumer Advocate or Mr. Aaron Smith with the stipulation of facts, the party with the disagreement must file a statement detailing the disagreements on or before January 30, 2009.

8. If any party objects to Mr. Aaron Smith's participation in the hearing by telephone conference call, the party must file such objection on or before January 30, 2009, and provide reasons for the objection.

9. On or before February 6, 2009, South Slope, Qwest, and the Consumer Advocate must each file a prehearing brief. If Mr. Aaron Smith chooses to file a prehearing brief, he must do so on or before February 6, 2009.

10. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa, on Tuesday, February 24, 2009, beginning at 9 a.m. Each party must provide a copy of its prepared testimony and exhibits, and its exhibit list, to the court reporter. If Mr. Aaron Smith chooses to participate in the hearing by telephone conference call, he must dial 1-866-685-1580, and enter conference code number 2816326 followed by the pound key at the time set for the hearing. Persons with disabilities requiring

assistive services or devices to observe or participate in the hearing must contact the Board at 515-281-5256 no later than five business days prior to the hearing to request that appropriate arrangements be made.

11. A post-hearing briefing schedule will be set at the conclusion of the hearing.

12. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become part of the evidentiary record of this proceeding. Pursuant to 199 IAC 7.23(4)"d," the party making reference to the data request must file one original and three copies of the data request and response with the Executive Secretary of the Board at the earliest possible time.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 13th day of November, 2008.